

Bankruptcy & Joint Marital Debt

Joint Marital Debt Can be Discharged; Hold Harmless Obligations Cannot

The intersection of BK and divorce law is significant when there is joint marital debt. In a Chapter 7 bankruptcy, a debtor cannot discharge a “hold harmless” obligation **to an ex-spouse** established in a divorce or legal separation decree. The debtor can discharge his or her personal liability to any joint creditor though (assuming that the debt is otherwise dischargeable) regardless of how a debt is treated by a divorce decree.

The result is that a creditor cannot collect directly from a Chapter 7 debtor on any pre-bankruptcy debt, including joint marital debt assigned to the debtor in a divorce decree. The creditor may sue the ex-spouse, however, who remains personally liable on this joint debt. The ex-spouse could then sue to enforce the decree’s hold harmless obligation to require the debtor to pay this debt.

EXAMPLE: Joe and Jen divorce in 2005, and the decree states that Jen will hold Joe harmless on their joint Capital One debt in the amount of \$5,000. Jen files a Chapter 7 bankruptcy in 2007. Her obligation to hold Joe harmless on the Capital One debt does not discharge; Jen’s personal liability to Capital One does discharge. If Capital One sues Joe for the debt, Joe can sue Jen to enforce the decree’s hold harmless provision. Should Capital One sue Jen directly, she can defend the case with proof of her bankruptcy discharge.

Chapter 13: Assessing the Likelihood of Hold Harmless Obligation Enforcement

There may be instances in which a Chapter 13 is the best route for a fully informed client since a Chapter 13 bankruptcy **will** discharge a hold harmless obligation created by a divorce decree. This analysis therefore only applies when a client has already divorced before filing bankruptcy.

A Chapter 13 should be considered when the enforcement of a hold harmless obligation is likely because there was significant joint marital debt **and** the non-bankrupt ex-spouse has assets which can be taken by the creditor. If the debt is relatively minor, the creditor may “write off” the entire debt upon notice of the filing spouse’s bankruptcy under the mistaken impression that the both spouses were discharged in bankruptcy.

A large debt, however, will catch the creditor’s attention. A joint judgment against our client and his or her spouse indicates that the creditor is serious in recovering the entire debt from either party, and informs us that the creditor is not writing this debt off. A **joint judgment creditor** is therefore more likely to initiate post-discharge and post-divorce collection activities from either spouse.

The ex-spouse’s financial situation is more significant. If the creditor is unable to collect from the ex-spouse because he or she is judgment proof, the ex-spouse cannot in turn enforce the hold harmless obligation. An adverse who has disappeared, is disabled, is a

classic “deadbeat”, or is otherwise unlikely to pursue enforcement of hold harmless obligation should not cause our client to unnecessarily file a Chapter 13. Thus, an assessment of the likelihood of future enforcement of any hold harmless obligation requires an understanding of the total amount of the joint debt, the existence of any joint debt judgments, and the ex-spouse’s current and likely future financial status.